

# Agenda

## Item #4



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: November 19, 2012

Re: Request for Waiver of Penalty by the National Organization for Marriage Maine PAC

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The National Organization for Marriage Maine PAC (the PAC) is a political action committee which was required to file an 11-Day Pre-General Report (the report). This report was due by 11:59 p.m. on October 26, 2012 but was not filed until October 27, 2012. Based on the amount of financial activity in the report and the number of days late, the Commission staff calculated the preliminary penalty to be \$8,001.11. The Commission staff sent a notice of staff finding of violation and preliminary penalty to Brian Brown, the treasurer of the PAC, on October 29, 2012. The Commission staff received a written request for a waiver of the penalty on November 13, 2012.

The PAC requests a waiver because:

- The PAC states it made a “bona fide” effort to file the report on time, preparing the report but failing to submit the report on time due to an oversight. The report was filed at 1:45 p.m. on October 27, 2012, approximately 14 hours late.
- The report contains few transactions.
- The PAC claims there was “no harm at all” suffered by the public and the “late filing did not result in any lack of disclosure to the public,” as all the transactions

save \$111.00 in bank fees were made available to the public by the timely report of Protect Marriage Maine, the recipient of the contributions from the PAC.

### **Staff Recommendation**

The PAC's failure to file in a timely manner deprived the public of information concerning the PAC's financial activities for 14 hours – half of them at night. While this is regrettable, the preliminary penalty of \$8,001 is disproportionate to the harm to the public from the late disclosure. The Commission staff recommends reducing the penalty by 75% to \$2000. The staff disagrees that there was "no harm at all" suffered by the public.

The PAC does not provide any detailed information concerning the oversight that, it says, led to the late filing. Accordingly, the Commission staff is unable to verify the PAC's claim that it made a "bona fide" effort to file the report on time.

NOM has used a number of PACs in different states, and is a sophisticated campaign organization. It is very familiar with Maine's election financing reporting laws and regulations.

Thank you for your consideration of this memo.

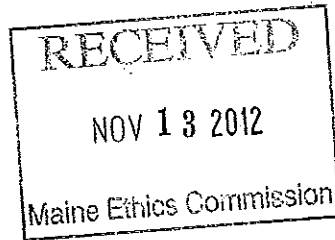
# ACT RIGHT

## LEGAL FOUNDATION

[www.ActRight.com/Legal](http://www.ActRight.com/Legal)

*A Public Interest Law Firm for Conservative Organizations*

Staff Counsel  
Barry A. Bostrom  
Noel H. Johnson  
Zachary S. Kester  
Kaylan L. Phillips  
Joseph A. Vanderhulst



Of Counsel  
J. Christian Adams  
Eric C. Bohnet  
Jared Haynie  
Cleta Mitchell  
Mike Wilkins

November 9, 2012

BY COURIER

Mr. Matthew Marett, PAC, Party & Lobbyist Registrar  
Commission on Governmental Ethics and Election Practices  
45 Memorial Circle  
Augusta, Maine 04333

Re: Request for waiver of penalty for late filing of 11-day Pre-General report

Dear Mr. Marett,

We have been retained by Mr. Brian Brown to represent the National Organization for Marriage Maine PAC in regards to the enforcement process triggered by the late filing of the PAC's 11-Day Pre-General report. We acknowledge that the PAC's filing was late, but respectfully request a waiver of the assessed penalty for the following reasons and mitigating circumstances.

First, the committee made a bona fide effort to file the report on time. As can be seen from the report itself, there were very few transactions to report. The report was prepared in a timely fashion, but was inadvertently not submitted by oversight. As soon as the oversight was noted, the report was filed. The report was filed at 1:45 p.m. on October 27, and so was a total of less than 14 hours late.

Mr Matthew Marett  
November 9, 2012  
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Second, and more significantly, there was no harm at all suffered by the public from the late disclosure. All of the transactions disclosed on the report (save for \$111.00 in bank fees) had already been made public through the report filed by Protect Marriage Maine, which was timely filed. With the exception of the bank fees incurred by the wire transfers, all that occurred were three contributions received by NOM ME PAC from National Organization for Marriage and then three contributions by NOM ME PAC to PMM. These ultimate contributions to PMM had already been disclosed by PMM before the deadline. Therefore, NOM ME PAC's late filing did not result in any lack of disclosure to the public.

For these reasons, NOM ME PAC respectfully requests that the Commission waive the assessed penalty in whole. In the alternative, NOM ME PAC respectfully requests that the Commission waive the penalty to the extent of the activity that was not disclosed to the public as a result of the late filing, that is, the \$111.00 in bank fees. We apologize for the oversight that resulted in the delay of a few hours in filing the report and very much appreciate the Commission's time and consideration of this waiver request.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Vanderhulst", with a stylized flourish at the end.

Joseph A. Vanderhulst  
ActRight Legal Foundation



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

October 29, 2012

**By Regular and Certified Mail**

Mr. Brian Brown, Treasurer  
National Organization for Marriage Maine PAC  
2029 K Street N.W., Suite 300  
Washington, DC 20006

**Re: Penalty for late filing of 11-Day Pre-General report**

Dear Mr. Brown,

The National Organization for Marriage Maine PAC was late in filing its 11-Day Pre-General report. The report was due by 11:59 p.m. on October 26, 2012, but was not filed until October 27. Under the Commission's statutes, the late filing of a report by a PAC triggers an enforcement process. Based on the amount of financial activity in the report, the number of calendar days the report was late, and the PACs history of violations, the commission staff has determined that a penalty of \$8,001.11 is owed. (Please see attached penalty matrix for the calculation).

The PAC may request that the Commission waive the violation or penalty in whole or in part. Any request for a waiver must be made within 14 calendar days of your receipt of this notice (or attempted delivery by the U.S. Post Office). The request must contain a full explanation of the reasons the committee filed late. Upon receiving your request, the Commission staff will schedule your appeal for an upcoming Commission meeting.

The Commission may waive the penalty if it determines that the report was late due to mitigating circumstances, which are defined as (1) a valid emergency; (2) an error made by the Commission staff; or (3) relevant evidence that the committee made a bona fide effort to file the report on time. Also, the Commission may waive the penalty if it is disproportionate to the level of experience of the person filing the report or the harm suffered by the public from the late disclosure.

The staff requests that the committee pay the preliminary penalty within 14 days of the date of this letter if it does not intend to request a waiver. Please use the payment receipt below when mailing payments. Payments may also be made online at [www.maine.gov/ethics](http://www.maine.gov/ethics) by clicking on the "penalty payment" link. Please call me at (207) 287-6221 or send me an email at [Matthew.Marett@Maine.gov](mailto:Matthew.Marett@Maine.gov) if you have any questions.

Sincerely,

Matthew Marett  
PAC, Party & Lobbyist Registrar

Enclosure: Payment Receipt and PAC penalty matrix

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE  
WEBSITE: [WWW.MAINE.GOV/ETHICS](http://WWW.MAINE.GOV/ETHICS)

PHONE: (207) 287-4179

FAX: (207) 287-6775

Payment Receipt

Mail payment to:

The Maine Ethics Commission  
135 State House Station  
Augusta, ME 04333.

Make checks payable to: "Treasurer, State of Maine."

Mr. Brian Brown, Treasurer  
National Organization for Marriage Maine PAC  
2029 K Street, N.W., Suite 300  
Washington, DC 20006

Violation: Late 11-Day Pre-General Report

Amount Due: \$8,001.11

Payment ID: 1920

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Committee Name: N.O.M. Maine PAC

Report Title: 11-Day Pre-General

Due Date: October 26, 2012

Previous Violation(s): N/A

Filed Date: October 27, 2012

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

For the first violation, 1%

For the second violation, 3%

For the third and each subsequent violation, 5%

A penalty begins to accrue at 11:59 p.m. on the day the report is due.

Penalty Example:		Your Penalty is calculated as follows:	
The treasurer files the PAC's report two (2) days late. The PAC has not had any previous late violations this biennium. The PAC reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is			
\$2,500	Greater amount of the total contributions received or expenditures made during the filing period	Contributions / Expenditures:	\$800,111.00
		x	
X .01	Percent prescribed for first violation	Percent Prescribed:	1%
			\$8,001.11
		x	
\$25.00	One percent of total contributions	Number of days late:	1
X 2	Number of calendar days late		
		Total penalty accrued:	\$8,001.11
\$50.00	Total Penalty		

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

#### MAXIMUM PENALTIES

21-A M.R.S.A. Section 1062-A(3)

\$10,000 for Pre- and Post-Election Reports, Quarterly Reports and 24-Hour Reports, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is one-fifth of the amount reported late.





COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
Mail: 135 State House Station, Augusta, Maine 04333  
Office: 45 Memorial Circle, Augusta, Maine

Website: [www.maine.gov/ethics](http://www.maine.gov/ethics)  
Phone: 207-287-4179  
Fax: 207-287-6775

## 2012 CAMPAIGN FINANCE REPORT FOR POLITICAL ACTION COMMITTEES

COMMITTEE INFORMATION		
NATIONAL ORGANIZATION FOR MARRIAGE MAINE 2029 K STREET N.W., STE. 300 WASHINGTON, DC 20006		TEL: (202)457-8060 FAX: (202)457-8066 EMAIL: <a href="mailto:nommepac@nationformarriage.org">nommepac@nationformarriage.org</a>
TREASURER		
BRIAN S. BROWN 2029 K STREET N.W., STE. 300 WASHINGTON, DC 20006		TEL: (609)858-4814 EMAIL: <a href="mailto:bbrown@nationformarriage.org">bbrown@nationformarriage.org</a>
TYPE OF REPORT	DUE DATE	REPORTING PERIOD
11-DAY PRE-GENERAL	10/26/2012	10/1/2012 - 10/23/2012
NO FINANCIAL ACTIVITY IN THIS REPORTING PERIOD FOR SCHEDULES A1, C		
CERTIFICATION		
<p>I, BRIAN S BROWN, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.</p> <p>REPORT FILED BY: BRIAN S BROWN ON BEHALF OF BRIAN BROWN, TREASURER REPORT FILED ON: October 27, 2012</p> <p>IF THIS REPORT IS FILED BY AN AUTHORIZED AGENT OF THE COMMITTEE, THE TREASURER AND AGENT ARE LIABLE FOR ANY VIOLATIONS OF MAINE CAMPAIGN FINANCE LAW (21-A M.R.S.A. CHAPTER 13) AND THE COMMISSION'S RULES THAT MAY RESULT FROM THE FILING OF A FALSE OR INACCURATE REPORT.</p>		

UNSWORN FALSIFICATION IS A CLASS D CRIME (17-A M.R.S.A. § 453).

NATIONAL ORGANIZATION FOR MARRIAGE MAINE

SCHEDULE A ONLY

### SCHEDULE A CASH CONTRIBUTIONS

- For contributors who gave more than \$50, the names, address, occupation, and employer must be reported. If "information requested" is listed instead of occupation and employer, the candidate is waiting to receive that information.
- Cash contributions of \$50 or less can be added together and reported as a lump sum.
- Contributor Types
 

1 = Individuals	4 = Party Committees
2 = Commercial Sources	5 = Candidate Committees
3 = Political Action Committees	6 = Unitemized Contributions

DATE RECEIVED	CONTRIBUTOR	OCCUPATION AND EMPLOYER	TYPE	AMOUNT
10/04/2012	NATIONAL ORGANIZATION FOR MARRIAGE 2029 K STREET NW, SUITE 300 WASHINGTON ME 20006		2	\$400,000.00
10/12/2012	NATIONAL ORGANIZATION FOR MARRIAGE 2029 K STREET NW, SUITE 300 WASHINGTON ME 20006		2	\$200,000.00
10/15/2012	NATIONAL ORGANIZATION FOR MARRIAGE 2029 K STREET NW, SUITE 300 WASHINGTON ME 20006		2	\$200,000.00
TOTAL CASH CONTRIBUTIONS ⇒				\$800,000.00

NATIONAL ORGANIZATION FOR MARRIAGE MAINE PAC

SCHEDULE B ONLY

**SCHEDULE B  
EXPENDITURES TO SUPPORT OR OPPOSE**

EXPENDITURE TYPES				
CNS	Campaign consultants	POL	Polling and survey research	
CON	Contribution to other candidate, party, committee	POS	Postage for U.S. Mail and mail box fees	
EQP	Equipment (office machines, furniture, cell phones, etc.)	PRO	Other professional services	
FND	Fundraising events	PRT	Print media ads only (newspapers, magazines, etc.)	
FOD	Food for campaign events, volunteers	RAD	Radio ads, production costs	
LIT	Print and graphics (flyers, signs, palmcards, t-shirts, etc.)	SAL	Campaign workers' salaries and personnel costs	
MHS	Mail house (all services purchased)	TRV	Travel (fuel, mileage, lodging, etc.)	
OFF	Office rent, utilities, phone and internet services, supplies	TVN	TV or cable ads, production costs	
OTH	Other	WEB	Website design, registration, hosting, maintenance, etc.	
PHO	Phone banks, automated telephone calls			
Only these expenditure types require a remark: CNS, OTH, PRO.				

DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
10/04/2012	PROTECT MARRIAGE MAINE P.O. BOX 288		CON	\$400,000.00
	CONTRIBUTION: PROTECT MARRIAGE MAINE			
10/12/2012	PROTECT MARRIAGE MAINE P.O. BOX 288		CON	\$200,000.00
	CONTRIBUTION: PROTECT MARRIAGE MAINE			
10/15/2012	PROTECT MARRIAGE MAINE P.O. BOX 288		CON	\$200,000.00
	CONTRIBUTION: PROTECT MARRIAGE MAINE			
TOTAL EXPENDITURES ➡				\$800,000.00

NATIONAL ORGANIZATION FOR MARRIAGE MAINE PAC

SCHEDULE B- 1 ONLY

**SCHEDULE B - 1  
OPERATING EXPENDITURES**

EXPENDITURE TYPES	
CNS Campaign consultants	POL Polling and survey research
CON Contribution to other candidate, party, committee	POS Postage for U.S. Mail and mail box fees
EQP Equipment (office machines, furniture, cell phones, etc.)	PRO Other professional services
FND Fundraising events	PRT Print media ads only (newspapers, magazines, etc.)
FOD Food for campaign events, volunteers	RAD Radio ads, production costs
LIT Print and graphics (flyers, signs, palmcards, t-shirts, etc.)	SAL Campaign workers' salaries and personnel costs
MHS Mail house (all services purchased)	TRV Travel (fuel, mileage, lodging, etc.)
OFF Office rent, utilities, phone and internet services, supplies	TVN TV or cable ads, production costs
OTH Other	WEB Website design, registration, hosting, maintenance, etc.
PHO Phone banks, automated telephone calls	
Only these expenditure types require a remark: CNS, OTH, PRO.	

DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
10/03/2012	BANK OF AMERICA 100 NORTH TRYON STREET CHARLOTTE, CHARLOTTE, NC 28255	Wire fee	OTH	\$12.00
10/04/2012	BANK OF AMERICA 100 NORTH TRYON STREET CHARLOTTE, CHARLOTTE, NC 28255	Wire fee	OTH	\$25.00
10/12/2012	BANK OF AMERICA 100 NORTH TRYON STREET CHARLOTTE, CHARLOTTE, NC 28255	Wire fee	OTH	\$12.00
10/15/2012	BANK OF AMERICA 100 NORTH TRYON STREET CHARLOTTE, CHARLOTTE, NC 28255	Wire fee	OTH	\$25.00
10/15/2012	BANK OF AMERICA 100 NORTH TRYON STREET CHARLOTTE, CHARLOTTE, NC 28255	Wire fee	OTH	\$12.00
10/16/2012	BANK OF AMERICA 100 NORTH TRYON STREET CHARLOTTE, CHARLOTTE, NC 28255	Wire fee	OTH	\$25.00
<b>TOTAL EXPENDITURES</b> ➡				<b>\$111.00</b>

SCHEDULE D  
UNPAID DEBTS AND OBLIGATIONS

- A debt or obligation is incurred if a committee places an order for a good or service without making a payment; makes a promise or agreement to pay for a good or service; signs a contract for a good or service; or receives delivery of a good or service for which the committee has not paid.
- This schedule is a list of all debts and obligations of the committee as of the end of this reporting period.

DATE OF OBLIGATION	CREDITOR	DESCRIPTION	AMOUNT
10/05/2012	NATIONAL ORGANIZATION FOR MARRIAGE 2029 K STREET NW, SUITE 300 WASHINGTON, DC 20006	SEPTEMBER BOOKKEEPING SERVICES	\$200.00
10/01/2012	ACTRIGHT COMPLIANCE SERVICES 209 W MAIN ST PLAINFIELD, IN 46168	OUTSTANDING INVOICE FOR JUNE LEGAL AND REPORTING SERVICES	\$1,000.00
10/01/2012	ACTRIGHT COMPLIANCE SERVICES 209 W MAIN ST PLAINFIELD, ME 46168	OUTSTANDING INVOICE FOR JULY LEGAL AND REPORTING SERVICES	\$575.00
10/01/2012	ACTRIGHT COMPLIANCE SERVICES 209 W MAIN ST PLAINFIELD, ME 46168	OUTSTANDING INVOICE FOR AUGUST LEGAL AND REPORTING SERVICES	\$75.00
TOTAL UNPAID DEBTS AND OBLIGATIONS ⇒			\$1,850.00

**SCHEDULE F  
SUMMARY SCHEDULE**

<b>CASH ACTIVITY</b>		
<b>RECEIPTS</b>	<b>TOTAL FOR THIS PERIOD</b>	<b>TOTAL FOR YEAR</b>
1. CASH CONTRIBUTIONS (Schedule A)	\$800,000.00	\$1,052,300.00
2. OTHER CASH RECEIPTS (interest, etc.)	\$0.00	\$0.00
3. LOANS (Schedule C, new loans and additional amounts loaned)	\$0.00	\$0.00
4. TOTAL RECEIPTS (lines 1+2+3)	\$800,000.00	\$1,052,300.00
<b>EXPENDITURES</b>		
5. EXPENDITURES TO SUPPORT OR OPPOSE (Schedule B)	\$800,000.00	\$1,050,000.00
6. OPERATING EXPENDITURES (Schedule B-1)	\$111.00	\$1,677.85
7. LOAN REPAYMENTS (Schedule C)	\$0.00	\$0.00
8. TOTAL PAYMENTS (lines 5+6+7)	\$800,111.00	\$1,051,677.85
<b>CASH SUMMARY</b>		
9. CASH BALANCE AT BEGINNING OF PERIOD (from last report)	\$733.15	
10. PLUS TOTAL RECEIPTS THIS PERIOD (line 4 above)	\$800,000.00	
11. MINUS TOTAL PAYMENTS THIS PERIOD (line 8 above)	\$800,111.00	
12. CASH BALANCE AT END OF PERIOD	\$622.15	
<b>OTHER ACTIVITY</b>		
	<b>TOTAL FOR THIS PERIOD</b>	<b>TOTAL FOR YEAR</b>
13. IN-KIND CONTRIBUTIONS (Schedule A-1)	\$0.00	\$10,324.00
14. TOTAL LOAN BALANCE AT END OF PERIOD (Schedule C)	\$0.00	
15. TOTAL UNPAID DEBTS AT END OF PERIOD (Schedule D)	\$1,850.00	